

Skyline in Limbo: Nairobi’s Planning Paralysis and the Court’s Call for Order

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An analysis of the case of Nairobi Civil Appeal No. E160 of 2025 Claire Kubochi Anami (Chairlady), Alex Tito Mwangi Muiruri (Secretary), Kacit Mediratta (Treasurer) Suing as officials of Rhapta Road Residents Association v. County Executive Committee Member (CECM) Built Environment and Urban Planning, Nairobi City County & 20 Others.

“Nairobi’s skyline may reach for the clouds, but its planning must be anchored in law, transparency, and the rights of both today’s and tomorrow’s citizens.”

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Facts of the Case

The Rhapta Road Residents Association, through its officials, challenged the Nairobi City County’s approvals for high-rise developments (up to 28 floors) along Rhapta Road. They argued these approvals violated zoning laws, planning policies, and constitutional rights to a clean and healthy environment.

The case was brought against various county officials, NEMA, and multiple developers who had received the contested approvals.

The Trial Court

The Environment and Land Court (ELC) found that the approvals exceeded permissible heights under the operative zoning regime, capped developments at 16 floors pending County Assembly action, and directed future compliance with the 2021 Development Control Policy. The ELC declined to award damages or order demolitions.

Appeal

Dissatisfied, the appellants sought more radical remedies, including cancellation of approvals and demolition. The 9th respondent cross-appealed, arguing the ELC misclassified the zoning of Rhapta Road.

Issues for Determination

The Court of Appeal distilled the dispute into five key issues:

1. *Whether the ELC have jurisdiction, or should the matter have gone to specialized tribunals under the Physical and Land Use Planning Act (PLUPA) and the Environmental Management and Coordination Act (EMCA)?*
2. *What is the legal force of the 2004 Zoning Guidelines, NIUPLAN 2016, and the 2021 Development Control Policy?*
3. *Did the ELC err in classifying Rhapta Road as Zone 4 instead of Zone 3C?*
4. *Were the Environmental Impact Assessment (EIA) licences lawfully issued?*
5. *What remedies should the court grant, especially in light of systemic governance gaps?*

Analysis and Findings:

Issue 1: Jurisdiction and Exhaustion

The respondents argued that the appellants should have used specialized tribunals (Liaison Committees under PLUPA, NET under EMCA). The appellants countered that their case raised broad constitutional and systemic governance issues beyond the remit of these bodies.

In its finding, the Court held that while exhaustion of statutory remedies is important, it is not absolute. Where a dispute raises systemic constitutional questions or requires structural remedies, courts may intervene directly. The ELC properly assumed jurisdiction in this case.

Issue 2: Status of Planning Instruments

The appellants insisted the 2004 Zoning Guidelines and NIUPLAN 2016 were the only valid frameworks. The County and developers argued that the 2004 Guidelines were obsolete, NIUPLAN 2016 was a broad strategy, and the 2021 Development Control Policy was the operative (though not formally approved) guide.

Firstly, in its finding, the court held that the 2004 Zoning Guidelines are no longer binding under the current constitutional and statutory framework. Secondly, NIUPLAN 2016 is a valid, strategic plan but not a parcel-specific zoning tool. Finally, the 2021 Development Control Policy, though not formally adopted, can be used as an interim administrative guide but lacks the force of law until approved by the County Assembly.

Issue 3: Zoning Classification

The ELC had classified Rhapta Road as Zone 4, capping heights at 16 floors. Developers argued, with documentary evidence, that Rhapta Road is classified as Zone 3C under the 2021 Policy, allowing up to 20 floors.

The Court found the ELC erred in its classification. Rhapta Road falls within Zone 3C under the 2021 Development Control Policy, with a permissible height of 20 floors (subject to technical and infrastructure constraints). The cross-appeal on this point was allowed.

Issue 4: Validity of EIA Licences

The appellants claimed EIA licences were issued based on misrepresentations and without proper scrutiny. NEMA and the developers argued that all statutory procedures were followed, and any challenge should have been made before the NET.

The Court found no evidence of procedural unfairness or illegality in the issuance of EIA licences. The ELC was correct to decline to invalidate them, and such disputes ordinarily fall within the NET’s jurisdiction.

Appropriate Relief

The appellants sought radical remedies, including demolition and damages. The Court recognized a structural governance gap: outdated zoning, lack of approved plans, and reliance on interim policies.

Finding

The Court fashioned a structural interdict as follows:

1. *Nairobi City County must, within six months, finalize, approve, and gazette comprehensive zoning and development control plans, including for Rhapta Road.*
2. *Interim and final progress reports must be filed in court.*
3. *Stakeholders may respond to these reports.*
4. *The Court retains limited supervisory jurisdiction to ensure compliance.*
5. *Existing approvals and licences remain valid unless illegality is demonstrated; pending applications are to be processed under current frameworks, subject to future lawful instruments.*

Conclusion/Disposition

In conclusion, the court dismissed the Appeal except for the structural interdict. The ELC’s approach and interim orders were largely affirmed. The court went ahead to allow the cross appeal on account that Rhapta Road is classified as Zone 3C, not Zone 4.

On the structural interdict, the County was compelled to adopt lawful, participatory, and up-to-date planning instruments within a set timeline, under court supervision. Each party was ordered to bear its own costs, reflecting the public interest nature of the litigation.

Implications of the Judgment

This judgment is poised to have far-reaching implications for urban governance and development in Nairobi and potentially other Kenyan cities. By mandating the Nairobi City County to finalize, approve, and gazette lawful zoning and development control plans within a strict timeline, and placing the process under continuing judicial supervision, the Court has set a precedent for judicial intervention where regulatory paralysis threatens constitutional rights and sustainable development.

Developers and investors now have clearer, though transitional, guidance on permissible developments, reducing legal uncertainty but also signalling that future approvals will b

For residents and civic groups, the judgment affirms the right to challenge systemic governance failures and compels authorities to prioritize public participation, environmental stewardship, and intergenerational equity. Ultimately, the decision is likely to accelerate the modernization of Nairobi’s planning framework, foster greater accountability, and balance the interests of growth, investment, and community well-being.

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